

Judge: Hon. Karen A. Overstreet
Chapter: 11
Hearing Date: December 20, 2013
Hearing time: 9:30 a.m.
Hearing Site: 700 Stewart St., #7206
Seattle, WA 98101
Response Date: December 13, 2013

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

JACOB BUTTNICK,
Debtor-in-Possession.

Case No. 13-20151-KAO

DECLARATION OF JASON P. AMALA IN
SUPPORT OF MOTION TO APPOINT A
CHAPTER 11 TRUSTEE

JASON P. AMALA declares under penalty of perjury of the laws of the State of
Washington as set forth below.

1. I am over the age of 21 and am competent to make this declaration.
2. I am an attorney with the law firm of Pfau Cochran Vertetis Amala PLLC and we represent Lance Miyatovich and Jolan, Inc (hereinafter the "Jolan Group") in the above-captioned case. We have represented the Jolan Group since we filed suit on their behalf against Jacob Buttnick on April 23, 2010, in King County Superior Court, case number 10-2-15302-1. We represented their interests throughout that litigation and during the subsequent efforts to collect on the resulting settlement and judgment against Mr. Buttnick.
3. During discovery in the litigation in King County Superior Court, Mr. Buttnick produced a "Recession Agreement" between himself and Otmane Bezzaz regarding Mr.

1 Buttnick's interest in the J&M Restaurant, LLC. The Recession Agreement is dated May 2,
2 2010, which is a little over a week after we filed suit against Mr. Buttnick. In the Recession
3 Agreement, Mr. Buttnick agrees to give up his 45% interest in the J&M Restaurant, LLC, to Mr.
4 Bezzaz. Attached hereto as Exhibit "1" is a true and correct copy of that Recession
5 Agreement. We subsequently amended the complaint and added claims against Mr. Buttnick,
6 Mr. Bezzaz, and the J&M Restaurant, LLC, for fraudulent transfer.

7 4. On February 16, 2011, we deposed Mr. Buttnick during the litigation in King
8 County Superior Court. During his deposition, Mr. Buttnick testified that he received nothing in
9 return for executing the "Recession Agreement" with Mr. Bezzaz. Instead, he testified that he
10 gave up his 45% interest in the J&M Restaurant, LLC, because Mr. Bezzaz is "a nice fellow and
11 he asked for it." Mr. Buttnick further testified that he had discussed with Mr. Bezzaz the
12 possibility that he would take the 45% interest back from Mr. Bezzaz once Mr. Buttnick was
13 finished with the litigation involving the Jolan Group. Attached as Exhibit "2" is a true and
14 correct copy of portions of the deposition of Mr. Buttnick.

15 I declare under penalty of perjury under the laws of the United States of America, 28
16 U.S.C. ¶ 1746, that the foregoing is true and correct.

17 Dated this 27th day of November 2013 in Seattle, Washington.

18 PFAU COCHRAN VERTETIS AMALA PLLC

19
20
21 By



Jason P. Amala, WSBA No. 37054
jason@pcvalaw.com
Attorneys for Jolan Group

EXHIBIT 1

This Rescission Agreement entered into this 01 day of May, 2010, by and between Jacob G. Buttnick and Otmane Bezzaz, together, the Parties.

RECITALS

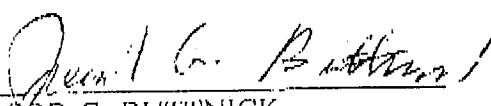
Whereas, the Parties entered into an agreement to form the "J&M Restaurant, LLC" ("LLC"); and

Whereas, the Agreement required that each party contribute certain funds for the formation and operation of the LLC; and

Whereas, Jacob G. Buttnick has not contributed any funds for the formation and operation of the LLC;

Now Therefore, the Parties agree as follows:

1. **RESCISSION.** For good and valuable consideration, including the forgiveness of any debt or obligation on the part of Jacob G. Buttnick, the receipt of which is hereby acknowledged, the Parties mutually agree that the agreement between the Parties regarding the creation, formation and ownership of the LLC is hereby rescinded, terminated, and cancelled as if said agreement had never been made.
2. **OPTION TO PURCHASE.** For good and valuable consideration, the receipt of which is hereby acknowledged, the Parties mutually agree that on or before September 30, 2012, Jacob G. Buttnick may exercise an option to purchase an ownership interest in the LLC under the same terms and conditions as the Parties' original agreement.
3. **RELEASE.** The Parties hereby release and forever hold harmless each other and the members, officers, managers, agents, attorneys, and employees of each, or any of their affiliates, predecessors, successors, or assigns, from any obligation or claim of any and all kinds whatsoever, whether known or unknown, whether disclosed or undisclosed, with respect to any and all matters pertaining to the creation, formation and ownership of the LLC.
4. **MERGER.** This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any oral agreements, understandings, negotiations, and proposals relating directly or indirectly, to any interest therein.
5. **VENUE.** Venue for any proceeding herein shall be in the courts of King County, Washington, and each party shall be responsible for their own attorneys fees and costs.
6. **SUCCESSORS.** The obligations and terms of this Agreement are binding upon the heirs, successors, and assigns of each party.
7. **WARRANTY OF SIGNATURE.** The signatories hereto represent and warrant that they have read and understand this Agreement and have the authority and approval to execute it on behalf of themselves and/or their respective entities.


JACOB G. BUTTNICK


OTMANE BEZZAZ

EXHIBIT 2

Transcript of the Testimony of

Jacob G. Buttnick

February 16, 2011

Jolan, Inc. v. Buttnick

No. 10-2-15302-1 SEA



Byers and Anderson, Inc.

**Court Reporters/Video/Videoconferencing
Seattle/Tacoma, Washington**

scheduling@byersanderson.com

www.byersanderson.com

One Union Square: 600 University Street, Suite 2300 Seattle, WA 98101-4128

Seattle: **206 340-1316** Toll Free: **800 649-2034**

Old Town District: 2208 North 30th Street, Suite 202 Tacoma, WA 98403-3360

Tacoma: **253 627-6401** Fax: **253 383-4884**

1 down one day and --
2 **A I don't recall that.**
3 **Q What do the terms for that lease require of Otmane**
4 **Bezzaz in terms of the amount of money or rents owing?**
5 **A We did not put -- you mean how much he owed on the**
6 **lease?**
7 **Q Right.**
8 **A Oh, how much he was obligated to pay for the lease.**
9 **Q On a -- monthly basis?**
10 **A I think it says \$9,000.**
11 Q And is that based on a market value analysis that you
12 did of any kind?
13 **A Not that I recall.**
14 Q Did he get credit in the lease for the \$40,000 that he
15 had paid to the bank for back amounts owed? Were
16 there any other payments made by either you or him in
17 executing that lease?
18 **A What payments would I have made?**
19 Q I don't know. That's what I'm wondering, if there is
20 any.
21 **A None by me. He simply assumed that liability to pay**
22 **the rent.**
23 Q Did he pay, for example, for any fixtures in the
24 building or a security deposit or any other lump sums?
25 **A Depending what you mean by fixtures. What are**
Page 66

1 **fixtures?**
2 Q Well, fixtures could be anything inside the J&M Cafe,
3 the same kind of stuff that was pulled out by Harry
4 Poll.
5 **A By Harry Poll. He got the place running. That's all**
6 **I know was in his hands. I don't know what he put in**
7 **there or anything else.**
8 Q What I'm wondering, though, is in the lease that you
9 entered into with Otmane Bezzaz, was he required to
10 make any payments upfront for anything like fixtures
11 or a security deposit?
12 **A No.**
13 Q Did he get credit from the \$40,000 that he paid for
14 back amounts you owed in terms of that applying to the
15 security deposit or paying for the fixtures or the
16 name?
17 **A No.**
18 Q Okay. What did the lease give to Otmane Bezzaz?
19 **A The right to be in the J&M.**
20 Q Anything else, any permission to use the name J&M Cafe
21 or permission to use the fixtures?
22 **A The answer to those questions is no and no.**
23 **Q I think you clarified earlier that you were one of the**
24 **owners of J&M Cafe for a period of time, right?**
25 **A Yes.**
Page 67

1 Q And remind me of what that time period was?
2 **A A number of months. I really have no idea.**
3 **Q Was it from the point of this lease being given to**
4 **Otmane Bezzaz forward?**
5 **A Yes.**
6 Q Okay. And are you listed as one of the owners in the
7 lease that you executed with Otmane Bezzaz?
8 **A What do you mean by "listed"?**
9 Q I mean, are you identified in the lease agreement as
10 being one of the lessors?
11 **A Lessors?**
12 Q One of the tenants?
13 **A I don't know the -- the lease does not refer to that**
14 **as far as I know.**
15 Q Is the -- is the lessor in the agreement that you
16 executed with Otmane Bezzaz Otmane Bezzaz himself or
17 is it a business name?
18 **A Lessor or lessee? He was never the lessor.**
19 Q Lessee.
20 **A Okay. He is the lessee in the lease. That's all I**
21 **know.**
22 Q I mean, is it a business name that's the lessee or is
23 it Otmane Bezzaz himself?
24 **A I believe it's Otmane.**
25 Q Do you have an obligation to pay yourself lease
Page 68

1 amounts under that lease with Otmane Bezzaz?
2 **A Not that I know of.**
3 **Q So what ownership interest did you have in the J&M**
4 **Cafe?**
5 **A I had a 45 percent interest.**
6 **Q And what did you give in consideration for the 45**
7 **percent interest?**
8 **A Nothing that I can recall.**
9 **Q And so why did Otmane Bezzaz agree to give you 45**
10 **percent ownership of the J&M Cafe?**
11 **A Because he's a nice fellow.**
12 Q Was that the only reason?
13 **A As far as I know.**
14 Q Do you have a written agreement showing why you got 45
15 percent --
16 **A No.**
17 Q -- interest in the business?
18 **A No.**
19 **Q At what point did you no longer have an interest in**
20 **the J&M Cafe?**
21 **A When I signed the interest back to him.**
22 **Q Okay. And when did that happen?**
23 **A I don't recall. A number of months ago. I don't**
24 **recall.**
25 Q Were attorneys involved in you giving up that
Page 69

1 interest?
2 **A No, not that I know of.**
3 **Q Why did you give up the interest?**
4 **A Because he's a nice fellow and he asked for it.**
5 **Q Any other reason?**
6 **A None that I can think of.**
7 **Q How did the issue come to a point where you had**
8 **decided to give up the interest?**
9 **A We sat down and we talked about it and we resolved**
10 **that I would.**
11 **Q Okay. Tell us about that discussion. When did it**
12 **happen?**
13 **A Sometime before I gave up the interest. I don't**
14 **recall exactly when.**
15 **Q Did you give up the interest in April of 2010, does**
16 **that sound about right?**
17 **A It could have been that long ago, but I'm uncertain.**
18 **I'd have to look at the agreement.**
19 **Q And was the agreement in the nature of a rescission of**
20 **your interest, is that what you called it?**
21 **A I'm not an attorney. It might be called that. I**
22 **think maybe it might be called that.**
23 **Q But in this instance you didn't have attorneys working**
24 **on it, right?**
25 **A I said I'm not an attorney.**

Page 70

1 **Q Right. But my point is that you weren't using**
2 **attorneys to develop whatever this rescission was?**
3 **A I never used an attorney. I personally never used an**
4 **attorney.**
5 **Q So I'm wondering then what did you call it as you**
6 **created this thing where you gave up your interest?**
7 **A Well, if you want to call it rescission, like I say,**
8 **I'm not an attorney. A rescission, withdrawal,**
9 **whatever it's called. I don't know.**
10 **Q I just want to know what you called it since you**
11 **drafted it.**
12 **A I would call it just my giving my interest back to**
13 **Otmene.**
14 **Q Did Otmene draft it or did you draft it?**
15 **A Otmene drafted it.**
16 **Q And did he have a lawyer working on drafting it?**
17 **A I have no idea.**
18 **Q Did it look like a lawyer document or a hand**
19 **scratcher?**
20 **A I'm not an attorney to make a decision like that. I**
21 **don't know those kinds of things.**
22 **Q I mean, was it on a napkin or was it on --**
23 **A It was not a napkin. It was on a piece of paper,**
24 **white stationery paper.**
25 **Q So the two of you sat down and just hammered this out**

Page 71

1 and you said, "Hey, I'm going to give up my interest"?
2 **A No. He brought it to me.**
3 **Q And so what did he say?**
4 **A It says that I'm giving up my interest of 45 percent.**
5 **Q Did you want to give it up?**
6 **A Yes, or else I wouldn't have done it.**
7 **Q I mean, you could have been forced to give it up, but**
8 **if I understand your testimony, you're saying that you**
9 **voluntarily gave it up?**
10 **A That's correct.**
11 **Q Had he discussed the issue with you before bringing**
12 **you a piece of paper?**
13 **A Oh, yes. Oh, yes.**
14 **Q Tell us about the discussions.**
15 **A He simply decided that he would like to have the**
16 **entire thing in his name.**
17 **Q Did you have an ownership interest in the J&M Cafe for**
18 **less than five months or six months?**
19 **A Whatever the time was that we had it.**
20 **Q And during the six months in which you had an**
21 **ownership interest did you receive any money from the**
22 **operation of the cafe?**
23 **A No.**
24 **Q So why did you have the ownership interest?**
25 **A Because as I stated previously, he wanted to give it**

Page 72

1 **to me.**
2 **Q And am I correct in understanding that at this point**
3 **you don't have any idea why he wanted you to give it**
4 **up after six months?**
5 **A He just wanted the entire thing for himself. That's**
6 **all I know.**
7 **Q Did -- I think you said that you read his deposition**
8 **testimony, right?**
9 **A No. I was incorrect on that. I simply saw some of**
10 **the things he did, was told some of the things he did.**
11 **I did not read -- I didn't know what that was. I'm**
12 **not an attorney. I saw some of the points he had**
13 **raised but I did not read it.**
14 **Q And where did you see points that he had raised?**
15 **MR. THOMASON: Objection; calls for**
16 **attorney/client privilege communication.**
17 **MR. COCHRAN: I don't know if it**
18 **does at this point. That's why I'm asking.**
19 **Q (By Mr. Cochran) What did you see?**
20 **A With my attorney.**
21 **Q What were you looking at that raised these issues?**
22 **MR. THOMASON: Same objection.**
23 **MR. COCHRAN: Go ahead.**
24 **THE WITNESS: We -- we simply -- he**
25 **reviewed to me some of the things in Otmene's**

Page 73

19 (Pages 70 to 73)

Jacob G. Buttnick

February 16, 2011

1 deposition.
2 Q (By Mr. Cochran) Okay. What you just testified just
3 now was that he told some things to you?
4 **A That's correct.**
5 Q Earlier I understood you said that you looked at
6 something. Did you look at anything?
7 **A No. He simply told me things and we talked about**
8 **things that were in the deposition.**
9 **Q Do you know whether Otmane Bezzaz testified about why**
10 **he asked you to rescind your interest in the J&M Cafe?**
11 **A I don't recall exactly what he said about that, but it**
12 **was done on a friendly basis. It was done.**
13 Q Have you talked to Otmane Bezzaz in the last two
14 weeks?
15 **A Oh, sure.**
16 Q Did you talk to him about his deposition?
17 **A No.**
18 Q No mention of the lawsuit?
19 **A Oh, we talked a little bit about the lawsuit, but --**
20 Q Okay. What did you talk about in terms of the
21 lawsuit?
22 **A Well, he knows there's a lawsuit and asked me how's it**
23 **going, and I mentioned there's a deposition coming up,**
24 **that's that.**
25 Q Did you talk to him about your testimony that you

Page 74

1 anticipated giving about the ownership interest that
2 you had in the cafe and how that came about and why it
3 disappeared?
4 **A No.**
5 Q So you understand that the lawsuit in this case filed
6 by Jolan against yourself was filed and served on you
7 in March of 2010, right?
8 **A Sometime in there I guess, yeah.**
9 Q And are you aware that you gave up your interest in
10 the J&M Cafe within a couple weeks of the lawsuit
11 being filed?
12 **A Whatever the time was.**
13 Q Was there a cause and effect there?
14 **A Not that I know of.**
15 Q When you think back, was one of the reasons you gave
16 up the interest because the lawsuit was filed against
17 you?
18 **A No.**
19 Q Does Otmane Bezzaz feel that way, that he asked you to
20 give up your interest because of the lawsuit?
21 **A Not that I know of.**
22 Q Is there a strategic benefit of giving up the interest
23 in terms of this lawsuit?
24 **A To me or to him?**
25 Q To both of you.

Page 75

1 **A I don't know what's with him. As far as to me, I**
2 **simply am a friend of his. That's why I gave it up.**
3 Q Is one of the reasons why you gave it up because
4 you're disposing of an asset that is potentially
5 recoverable in this lawsuit?
6 **A No.**
7 Q Did you have a discussion with Otmane Bezzaz about
8 that?
9 **A No.**
10 Q Do you have plans to -- is he going to magically out
11 of his friendship give you an interest back after this
12 lawsuit's over with?
13 **A I don't know.**
14 Q Did you discuss that?
15 **A Not yet.**
16 Q Is it likely that you will resume an ownership
17 interest after this lawsuit's finished?
18 **A I have no idea. We haven't discussed it.**
19 Q It's possible out of your friendship that that may
20 occur?
21 **A Anything is possible.**
22 MR. COCHRAN: I bet. Let me ask
23 about some of the defenses that you've raised in your
24 answer, and I don't know if you've seen those for a
25 while, but let me give you a copy of that.

Page 76

1 (Exhibit No. 1 marked for
2 identification.)
3
4 THE WITNESS: I'm going to have to
5 use the bathroom now.
6 MR. COCHRAN: Sure.
7 (Recess 11:53 to 11:56 a.m.)
8
9 Q (By Mr. Cochran) Mr. Buttnick, before I ask about
10 Exhibit 1, let me ask a couple things to make sure I'm
11 clear on the record.
12 **Did you receive an income stream of any kind from**
13 **the operation of the J&M Cafe as a result of your 45**
14 **percent ownership?**
15 **A No.**
16 **Q Did you receive an income stream from lease amounts**
17 **owed by the J&M Cafe from November '09 to the present?**
18 **A No.**
19 **Q In other words -- and I may not have made that clear.**
20 **Has J&M Cafe as now operated by Otmane Bezzaz paid**
21 **amounts owing under the lease on a monthly basis to**
22 **you?**
23 **A He has instead made the payment on the building which**
24 **amounts to the same thing. No.**
25 **Q 9,000 a month roughly?**

Page 77

<p>1 value of the J&M business at that time was \$870,000?</p> <p>2 A I have not any idea about that whatsoever. It didn't</p> <p>3 concern me. As I mentioned, if he got 20 million for</p> <p>4 it, that's fine with me, as long as I got my things</p> <p>5 that have to be done for me.</p> <p>6 Q It's an important issue potentially now for you in</p> <p>7 front of a jury if we're talking about whether you</p> <p>8 tortuously interfered with Jolan's right to sell the</p> <p>9 business. Do you have an opinion about whether</p> <p>10 870,000 was the market value of the J&M business?</p> <p>11 A I have no idea. Absolutely no idea.</p> <p>12 MR. COCHRAN: I'll get another</p> <p>13 document marked.</p> <p>14 (Exhibit No. 17 marked for</p> <p>15 identification.)</p> <p>16</p> <p>17 Q (By Mr. Cochran) Feel free to take time to read all</p> <p>18 the pages.</p> <p>19 A Thank you. Okay. I've concluded.</p> <p>20 Q Have you ever seen this letter before?</p> <p>21 A Yes.</p> <p>22 Q And you consulted with Mr. Siderius before sending it?</p> <p>23 A Yes. Mr. Siderius's firm sent it.</p> <p>24 Q Right. But his letter indicates that you and he have</p> <p>25 looked at it, you and he are confused about a couple</p> <p>Page 174</p>	<p>1 My question to you is that was not accurate at the</p> <p>2 time of March 7, 2008?</p> <p>3 A That may not have been, that's right. I think that's</p> <p>4 correct. But it would be subject to legal look-over</p> <p>5 on these documents, but you could be right about that.</p> <p>6 (Exhibit No. 18 marked for</p> <p>7 identification.)</p> <p>8</p> <p>9 Q (By Mr. Cochran) So Exhibit 18 is an April 2, 2008</p> <p>10 letter from Brian Read of the Siderius firm to counsel</p> <p>11 for Jolan. Have you seen this document before?</p> <p>12 A Yes.</p> <p>13 Q On the last page, or last paragraph, rather, of Page 2</p> <p>14 it says, and I'll quote, "We understand that Jolan,</p> <p>15 Inc. has been negotiating for the sale of the J&M</p> <p>16 business notwithstanding that Mr. Buttnick has not</p> <p>17 consented to such a proposed assignment." And that is</p> <p>18 consistent with the position you'd been taking all the</p> <p>19 way up to April 2, 2008, correct?</p> <p>20 A Correct.</p> <p>21 Q It goes on to say, "We wish to reiterate Mr. Buttnick</p> <p>22 has the right to refuse consent in his sole</p> <p>23 discretion," correct?</p> <p>24 A Mm-hm.</p> <p>25 Q Again I ask you, did that sole discretion include</p> <p>Page 176</p>
<p>1 issues from the Upward Swing offer. And so as I</p> <p>2 understand it anyway, you were in direct consultation</p> <p>3 with Mr. Siderius about the Upward Swing offer, right?</p> <p>4 A Yes.</p> <p>5 Q On the second page down in the last paragraph of that</p> <p>6 page, it says, and I'll quote, "Please understand that</p> <p>7 Mr. Buttnick does not oppose consideration of a new</p> <p>8 tenant and operator of the J&M Cafe & Card Room</p> <p>9 business. Most likely a new lease will be required."</p> <p>10 Is that consistent with your recollection?</p> <p>11 A Yes.</p> <p>12 Q And the new lease terms that you were requiring at</p> <p>13 that time included a change from a \$12,000 a month</p> <p>14 rent to \$14,000 a month rent, right?</p> <p>15 A No, not necessarily.</p> <p>16 Q In that same paragraph it says, "Mr. Miyatovich and</p> <p>17 Mr. Eagle are personal guarantees on the existing</p> <p>18 lease." That wasn't accurate as of March 7, 2008, was</p> <p>19 it?</p> <p>20 A I'm sorry. What's the question again, please?</p> <p>21 Q In this letter in Exhibit 17, the March 7, 2008 letter</p> <p>22 from Mr. Siderius, in the last paragraph on Page 2 in</p> <p>23 the middle of the paragraph it says, and I'll quote,</p> <p>24 "Mr. Miyatovich and Mr. Eagle are personal guarantees</p> <p>25 on the existing lease."</p> <p>Page 175</p>	<p>1 motivation such as that you wanted to put Jolan out of</p> <p>2 business so you yourself could acquire an ownership</p> <p>3 interest at some point in J&M Cafe?</p> <p>4 MR. THOMASON: Objection; asked and</p> <p>5 answered.</p> <p>6 MR. COCHRAN: Go ahead.</p> <p>7 THE WITNESS: The answer is</p> <p>8 absolutely not.</p> <p>9 Q (By Mr. Cochran) You would agree that that would have</p> <p>10 been an improper reason?</p> <p>11 A No, I'm not saying that. That's a legal opinion. But</p> <p>12 that wasn't any thought on my part. I like rent</p> <p>13 coming in.</p> <p>14 Q Or income coming in, whether it's rent or monies out</p> <p>15 of the -- out of the business operation, right? Would</p> <p>16 it have mattered to you which way the money was</p> <p>17 coming?</p> <p>18 A I knew I had rent coming in. I'm a poor operator of</p> <p>19 any kind of a place. I knew I couldn't operate a</p> <p>20 place.</p> <p>21 Q Which is ultimately why you had Otmane Bezzaz be the</p> <p>22 operator of the place and you had a 45 percent</p> <p>23 interest, right?</p> <p>24 A Otmane came in because I was about to lose the</p> <p>25 building. That's the only reason -- he didn't come in</p> <p>Page 177</p>

45 (Pages 174 to 177)

Jacob G. Buttnick

February 16, 2011

<p>1 anytime before. He came in and saved the building.</p> <p>2 He says what do you want, I'll operate the place. I</p> <p>3 says fine. At that point I was within days of losing</p> <p>4 the building.</p> <p>5 Q Did you make an offer in the bankruptcy proceedings to</p> <p>6 buy the J&M business?</p> <p>7 A Yes.</p> <p>8 Q For how much?</p> <p>9 A \$25,000.</p> <p>10 Q Substantially lower than the market value for the J&M</p> <p>11 business at that time?</p> <p>12 A I have no idea what a closed business was worth.</p> <p>13 Q But you did know that J&M had been getting bona fide</p> <p>14 offers of \$880,000 and \$870,000?</p> <p>15 A Fine. This was a closed business.</p> <p>16 MR. COCHRAN: I've got one more.</p> <p>17 (Exhibit No. 19 marked for</p> <p>18 identification.)</p> <p>19</p> <p>20 Q (By Mr. Cochran) Exhibit 19 is a letter dated June 6,</p> <p>21 2008 from attorney Brian Read of the Siderius firm</p> <p>22 sent to Jolan, Inc. Did you authorize this letter?</p> <p>23 A Yes.</p> <p>24 Q No. 2 on Page 1 references insurance and requirements</p> <p>25 of insurance?</p> <p>Page 178</p>	<p>1 Q Anything specifically, though, addressing expressly</p> <p>2 the issue of assault and battery?</p> <p>3 A No, but he did take it out from an insurance man. He</p> <p>4 knew about it. He had it for many years.</p> <p>5 Q But my question, though, is: Does anything in the</p> <p>6 lease --</p> <p>7 A It does not mention assault. It just says any type of</p> <p>8 liability, and that includes that.</p> <p>9 Q Did --</p> <p>10 A That's my -- go ahead.</p> <p>11 Q Did you ever ask Martin Bernstein for advice on how to</p> <p>12 prevent Jolan, Inc. from selling its J&M business?</p> <p>13 A Absolutely not.</p> <p>14 Q Did you ever tell him that you wanted to take the J&M</p> <p>15 Cafe from Lance Miyatovich and Jolan, Inc.?</p> <p>16 A No. That's an absolute lie, in lieu of the man saying</p> <p>17 it.</p> <p>18 Q What's that?</p> <p>19 A Well, I consider the source, but that's an absolute</p> <p>20 lie.</p> <p>21 Q Did you ever tell Martin Bernstein that you wanted to</p> <p>22 keep the J&M Cafe business for yourself?</p> <p>23 A No.</p> <p>24 Q Did you ever tell him that you wanted to try to stop</p> <p>25 the sale of the J&M business by Jolan, Inc.?</p> <p>Page 180</p>
<p>1 A No. 2, yeah.</p> <p>2 Q Can you point to anything in the original lease</p> <p>3 agreement from 1993 or the modified and amended lease</p> <p>4 in 2002 that requires specifically insurance for</p> <p>5 assault and battery?</p> <p>6 A Do you want me to take a look at the lease?</p> <p>7 Q Please. No. 2 is the -- Exhibit No. 2 is the 1993</p> <p>8 lease.</p> <p>9 A All right. I have the lease.</p> <p>10 Q Can you point to anything in there that requires</p> <p>11 insurance specifically to cover assault and battery?</p> <p>12 MR. THOMASON: Asks for a legal</p> <p>13 conclusion.</p> <p>14 MR. COCHRAN: Go ahead.</p> <p>15 THE WITNESS: My attorney felt there</p> <p>16 was. I'm just looking over the paragraph now. He</p> <p>17 felt on very solid ground having to do this, and...</p> <p>18 I'm not a lawyer, but I see what the fourth line said.</p> <p>19 Q (By Mr. Cochran) Go ahead and read that, if you</p> <p>20 would.</p> <p>21 A "Insuring tenant against any liability arising out of</p> <p>22 the ownership, use, occupancy, or as maintenance of</p> <p>23 the premises and the pertinent areas, and listing</p> <p>24 landlord as an additional insured on any type of</p> <p>25 liability."</p> <p>Page 179</p>	<p>1 A Of course not. I couldn't run a business. What would</p> <p>2 I do with it? No.</p> <p>3 Q Did you ever tell him you wanted to force Lance</p> <p>4 Miyatovich and his company into bankruptcy?</p> <p>5 A No.</p> <p>6 Q What other work did you have Martin Bernstein do for</p> <p>7 you other than some negotiations with respect to</p> <p>8 Jolan?</p> <p>9 A Might have been some other issue come up, not with</p> <p>10 J&M, but 99 percent was talking to the J&M which I</p> <p>11 should have talked to directly.</p> <p>12 Q What other work did he do for you?</p> <p>13 A I don't recall. And there may not have been any --</p> <p>14 any other. Basically I think it was almost a hundred</p> <p>15 percent this thing with J&M.</p> <p>16 Q Anything else you can remember, any other work?</p> <p>17 A I'm sorry?</p> <p>18 Q Any other work, though, that you can remember that he</p> <p>19 did?</p> <p>20 A No.</p> <p>21 Q Was there any one particular precipitating issue that</p> <p>22 caused you and Martin Bernstein to have a falling out?</p> <p>23 A Any beside what?</p> <p>24 Q I'm saying, was there any?</p> <p>25 A I think I mentioned to you before that this estoppel</p> <p>Page 181</p>

1 A Oh, my gosh. Mark.
2 MR. MIYATOVICH: Maberry.
3 Q (By Mr. Cochran) Does Maberry sound right?
4 A Yeah, that's it.
5 Q From Kuresman Insurance?
6 A Yeah, up by the lake up there.
7 Q Did Mark Maberry inform you at any point that it was
8 impossible for a business like J&M Cafe to get \$2
9 million for an endorsement for assault and battery?
10 A Yes, because he had it before. Sure it was.
11 Q That it was possible or impossible?
12 A He said it was possible. But the -- one of the
13 problems was he had had all his troubles there with
14 the police and everything, so it -- he wasn't sure. I
15 guess he wasn't sure. That's going back a few years.
16 Q Who, that Maberry wasn't sure, you mean?
17 A I forget if he said -- he said he had it for him in
18 the past, he could probably get it for him. But there
19 was some mention of the -- you know, the trouble in
20 there, and it might have cost more or something like
21 that. I don't recall.
22 (Exhibit No. 25 marked for
23 identification.)
24
25 Q (By Mr. Cochran) Mr. Buttnick, I'm going to have you

Page 194

1 look at Exhibit 25. If you can, tell us what this
2 document is, Exhibit 25 that just got marked.
3 A Oh. Yes.
4 Q Okay. So tell us what it is, if you would.
5 A Well, I don't understand it too well. I mean, I don't
6 understand the legal things, but we went down to I
7 think the secretary of state's office and we formed
8 this company, and I had 45 percent of the company.
9 Q So you and Mr. Bezzaz went down to the secretary of
10 state's office to do this?
11 A Yes.
12 Q Did you drive down together?
13 A I believe so.
14 Q And did Mr. Shulkin come with you?
15 A No.
16 Q Did he have discussions about what role you would play
17 in this new corporation, the J&M Restaurant
18 corporation?
19 A No.
20 Q Had you discussed the formation of the corporation
21 very long before this was executed which is on, what,
22 October 26, 2009?
23 A I forget. I was finishing with Shulkin at that point,
24 and I don't recall if we brought this thing up for his
25 signature. I don't know. But he definitely did not

Page 195

1 go down there.
2 Q So just to confirm now, this doesn't indicate it, but
3 you've confirmed that you received a 45 percent
4 interest in the J&M Restaurant, LLC, correct?
5 A Correct.
6 Q You didn't contribute to any startup costs, right?
7 A That's correct.
8 Q You didn't contribute to any money at all to the
9 operation of this LLC, correct?
10 A That's correct.
11 Q You didn't have any obligation in terms of running it?
12 A No. That's correct.
13 Q Do you know how much the startup costs were?
14 A I know they were considerable, but I haven't got the
15 exact amount. I know there was -- it was over a
16 hundred thousand dollars, but I don't know exactly.
17 Q Are you still a member in any way of the J&M
18 Restaurant, LLC?
19 A I am not.
20 Q And you gave up your interest within roughly two weeks
21 of this lawsuit being filed, right?
22 A No. Much later. This was filed in October, wasn't
23 it?
24 Q March, wasn't it?
25 A March, okay.

Page 196

1 Q March of 2010.
2 A Oh, no. It was after that sometime.
3 Q A couple weeks, right?
4 A I thought it was longer. I could be wrong.
5 Q When did you first tell Otmane Bezzaz that the lawsuit
6 was filed?
7 A I guess when it was filed.
8 Q Right after you received service on it?
9 A I think so.
10 Q Okay. How did he respond?
11 A Well, he has a long dislike of the president of Jolan,
12 so he simply accepted it. That's all. There wasn't
13 much comment.
14 Q What is -- what has he said about Mr. Miyatovich?
15 A He didn't say anything at the time.
16 Q Has he said something to you since which leads you to
17 testify that he has a long dislike for him?
18 A No. I remember before, Miyatovich wouldn't talk to
19 him on the street, so on and so forth. Miyatovich
20 owed him money for a sewer which he never paid, a
21 sewer thing, and so some -- some issues like that came
22 up. So I knew that there was some problems.
23 Q How long after you formed the J&M Restaurant, LLC did
24 you execute a lease with the J&M Restaurant, LLC as a
25 tenant?

Page 197

50 (Pages 194 to 197)

Jacob G. Buttnick

February 16, 2011

1 **A Very soon after. Very soon. I don't know exact.**
2 **(Exhibit No. 26 marked for**
3 **identification.)**
4
5 **Q (By Mr. Cochran) Exhibit 26 is a November 10, 2009**
6 **document from the Washington State Liquor Control**
7 **Board. It lists you as one of the applicants for a**
8 **liquor license --**
9 **A Right.**
10 **Q -- for the J&M Restaurant, LLC?**
11 **A Correct.**
12 **Q You did form part of the group that submitted an**
13 **application for that?**
14 **A Yes.**
15 **Q And ultimately J&M received a liquor license, right?**
16 **A It did.**
17 **Q You submitted a personal and criminal history to the**
18 **liquor control board?**
19 **A Yes.**
20 **Q Did you have anything to report?**
21 **A No. I was never arrested.**
22 **Q It says "source of funds" and there's a section here**
23 **on Page 2 of this document. It says, "Source of funds**
24 **and certification, (the total dollar amount of the**
25 **source of funds and certification must meet or exceed**
Page 198

1 the total dollar amount of the outlying costs)" and it
2 lists Bezzaz Otmane [sic], number one, and then
3 yourself number two. Did you submit any kind of
4 financial statement?
5 **A I forgot about that. If I did, I did. It's on**
6 **record.**
7 **Q Then right after that there's a bullet point for a**
8 **thing called tied-house participation statement. It**
9 **lists yourself, Bezzaz Otmane and it looks like Saloua**
10 **Elasmar for that statement. What is that statement?**
11 **A I don't know. It's been a long time since I did it.**
12 **I forget, I filled out some documents, but I forget**
13 **that I did.**
14 **Q Who is Elasmar Saloua?**
15 **A Who is who?**
16 **Q The person who is listed second in between yourself**
17 **and Bezzaz.**
18 **A Oh. That must be Otmane's wife.**
19 **Q Do you know her? Have you met her?**
20 **A Yes.**
21 **Q Is she a part of the corporation?**
22 **A I don't know what -- if she was or not, being married**
23 **to him, I don't know.**
24 **(Exhibit No. 27 marked for**
25 **identification.)**
Page 199

1 **Q (By Mr. Cochran) This is another document from the**
2 **Washington State Liquor Control Board regarding notice**
3 **of liquor notice application. This identifies you as**
4 **one of the applicants for the J&M Restaurant, LLC,**
5 **right?**
6 **A Correct, yes.**
7 **(Exhibit No. 28 marked for**
8 **identification.)**
9
10 **Q (By Mr. Cochran) This Exhibit 28 is a copy of the**
11 **executed commercial lease that you entered into with**
12 **the J&M Restaurant as a tenant?**
13 **A Yes.**
14 **Q Am I correct in understanding this lease called for**
15 **the lessee, that being J&M Restaurant, to pay \$2,000 a**
16 **month for the lease?**
17 **A There was a few provisions made as to time here.**
18 **Shall I -- what shall I answer? What was the**
19 **question?**
20 **Q I'm wondering, it seems to say in the first sentence**
21 **or so of the term and rent section that the restaurant**
22 **LLC would pay \$108,000 a year which would be about**
23 **9,000 a month, but then a sentence or two later it**
24 **says that the lessee will pay \$2,000 per month?**
25 **A Yeah, that's -- are you asking me about it?**
Page 200

1 **Q Yeah. I'm trying to understand it.**
2 **A That would be until the restaurant opens.**
3 **Q Okay. On the bottom of that section it says the lease**
4 **payments are an addition to any dividend or**
5 **distribution of lessors as the owner of 45 percent of**
6 **the LLC, and they're talking about you, correct?**
7 **A Where are you reading from?**
8 **Q The last sentence of that term and rent section.**
9 **A Oh, oh. Yes.**
10 **Q And your testimony under oath is that you gave up this**
11 **interest described here in the commercial lease**
12 **document just because you're a good guy?**
13 **A Largely. Also, I wasn't contributing to the**
14 **installation of the restaurant, and that's about it.**
15 **Q What do you mean by that?**
16 **A I wasn't contributing to the -- I wasn't helping them**
17 **with the installation of the restaurant and the**
18 **honorable thing for me to do was to give that interest**
19 **back.**
20 **Q Was -- where was your obligation to be involved in the**
21 **installation of the restaurant spelled out?**
22 **A There wasn't. It was just a feeling that I should,**
23 **and I'm a moral person, and I did that.**
24 **Q So did anyone bring to your attention the concern that**
25 **they had that you weren't involved in the installation**
Page 201

1 of the restaurant?
2 **A He never forced me out and said unless you give, you**
3 **got to get out. I felt morally I wasn't contributing**
4 **and that I should not have the 45 percent.**
5 **Q Am I correct in understanding that he never raised any**
6 **issue about you giving up your 45 percent interest?**
7 MR. THOMASON: Objection; misstates
8 testimony.
9 MR. COCHRAN: Go ahead.
10 THE WITNESS: You have the --
11 answer, right? I can answer?
12 MR. THOMASON: Yeah.
13 **THE WITNESS: We had some**
14 **discussions, friendly discussions, and no, there was**
15 **no forcing out by anybody, forcing me out or anything**
16 **else.**
17 Q (By Mr. Cochran) I assume that to be the case. What
18 I'm more interested in is did you give it up
19 voluntarily to avoid it being an asset in this
20 litigation?
21 **A No.**
22 **(Exhibit No. 29 marked for**
23 **identification.)**
24
25 Q (By Mr. Cochran) Exhibit 29 may answer the question
Page 202

1 about what a tied-house participation statement is.
2 That's what it appears to be. It's a document from
3 the Washington State Liquor Control Board. It appears
4 to have been executed by yourself on November 20,
5 2009; is that accurate?
6 **A I guess so. I signed a bunch of papers one evening,**
7 **and I guess I signed -- I'm not even sure what it is.**
8 Q Were you reviewing the papers that you were signing?
9 **A Not thoroughly.**
10 Q Is it fair to say that you do not diligently review
11 documents that you sign?
12 **A Sometimes. When I trust the people.**
13 **(Exhibit No. 30 marked for**
14 **identification.)**
15
16 Q (By Mr. Cochran) This is a license investigator
17 initial interview note from the liquor control board
18 for the general restaurant LLC J&M Restaurant, LLC.
19 It says how many members hold more than 10 percent
20 interest, it says two. That would have been yourself
21 and Bezzaz Otmane, right?
22 **A Yes.**
23 Q On the second section there's a question under the
24 spirits, beer, wine restaurant questions that asks
25 whether you're going to have entertainment, and the
Page 203

1 answer to the liquor control board was no. Do you see
2 that?
3 **A No, but at the time we had thought not.**
4 Q And how soon after you started operating did you begin
5 having entertainment?
6 **A Oh, a couple months. I really don't know exactly.**
7 Q Did you go back and amend your statement?
8 **A I'm sure he did. He's an honest man. I'm sure he**
9 **did.**
10 Q Did you?
11 **A I didn't realize I had to. I thought he was handling**
12 **it. But if we have to -- if he has to, I'll tell him**
13 **he has to. I'm sure he did because they've had**
14 **investigators through there. I'm sure.**
15 Q Down in the bottom of the second page under the real
16 property section, it lists you as being the owner of
17 the real property and leasing to the LLC. Under the
18 business section it says "are you buying the business,
19 leasing the business, or creating a new business?" It
20 says, "In creating new, previous licensee has filed
21 for Chapter 7 and quit the business" and you're
22 talking about Jolan there, right?
23 **A I guess so.**
24 Q Then it says what is the purchase startup date,
25 December of '09, correct? Do you see that where it
Page 204

1 says December '09?
2 **A Where it says December 9th?**
3 Q Right.
4 **A Yeah, that didn't occur.**
5 Q Did it start up later than that?
6 **A Yes.**
7 Q When did it start up?
8 **A Sometime mid January.**
9 Q Over on the last page it has a section that says,
10 "Total cost for the business venture" that's the next
11 to the last one, and it's blanked out here in these
12 liquor control documents. Do you have the originals?
13 **A He may have them in the office. He may have them in**
14 **the office.**
15 Q Do you remember what the total overall cost was to
16 get --
17 **A No.**
18 Q -- into the business and how much money it was to open
19 the doors?
20 **A No.**
21 Q It says the source of the funds would come from an
22 investment account, Swiss bank. Were either of those
23 money that you had?
24 **A Where are you reading from?**
25 Q It says source of funds --
Page 205

**Byers & Anderson Court Reporters/Video/Videoconferencing
Seattle/Tacoma, Washington**

<p>1 A Yes.</p> <p>2 Q -- right underneath that, where is your money coming</p> <p>3 from?</p> <p>4 A Okay.</p> <p>5 Q One says an investment account, the other says Swiss</p> <p>6 bank. Were either of those places you held funds?</p> <p>7 A No.</p> <p>8 Q Have you ever held funds at a Swiss bank?</p> <p>9 A No.</p> <p>10 Q Have you ever held funds in an investment account?</p> <p>11 A No.</p> <p>12 (Exhibit No. 31 marked for</p> <p>13 identification.)</p> <p>14</p> <p>15 Q (By Mr. Cochran) Exhibit 31 is an outline of the</p> <p>16 costs. Do you have any recollection of what the costs</p> <p>17 were?</p> <p>18 A No. As I mentioned earlier, I don't.</p> <p>19 (Exhibit No. 32 marked for</p> <p>20 identification.)</p> <p>21</p> <p>22 Q (By Mr. Cochran) Is Exhibit 32 a true and accurate</p> <p>23 copy of the personal and criminal history statement</p> <p>24 that you submitted for a liquor license on behalf of</p> <p>25 the J&M Restaurant, LLC?</p> <p style="text-align: right;">Page 206</p>	<p>1 Q It says "I have had Mr. Bezzaz as a tenant in this</p> <p>2 building for the past nine years and we share the same</p> <p>3 goals for our future." Tell us about what those were.</p> <p>4 A Where are you reading from?</p> <p>5 Q This document.</p> <p>6 A Number 33?</p> <p>7 Q 33, right.</p> <p>8 A There's only one page that I got.</p> <p>9 Q Right. Right on the --</p> <p>10 A Excuse me.</p> <p>11 Q -- second paragraph?</p> <p>12 A Yeah, I see. Okay.</p> <p>13 Q What are your goals that you share for the future?</p> <p>14 A To run a very decent place and nonfights and nondope</p> <p>15 and just a very upscale restaurant and bar, nobody</p> <p>16 hitting anybody.</p> <p>17 Q Did you change your lease with J&M Restaurant, LLC</p> <p>18 after you rescinded your 45 percent interest?</p> <p>19 A The lease I believe still says it, I believe. I don't</p> <p>20 think we've done that yet, but we have to do it. Just</p> <p>21 haven't gotten around to it. I forget. I really</p> <p>22 forget about that.</p> <p>23 Q Did you require him to pay a market value monthly rent</p> <p>24 since you rescinded your interest?</p> <p>25 A As I mentioned to you, I'm not receiving rent from the</p> <p style="text-align: right;">Page 208</p>
<p>1 A I guess so.</p> <p>2 (Exhibit No. 33 marked for</p> <p>3 identification.)</p> <p>4</p> <p>5 Q (By Mr. Cochran) Mr. Buttnick, if you can look at</p> <p>6 Exhibit 33 and tell us what this document is.</p> <p>7 A Yeah, that's what I -- okay. What is the question?</p> <p>8 Q What is the document?</p> <p>9 A It states as to where -- oh, it was my investment in</p> <p>10 the restaurant, my contribution.</p> <p>11 Q Okay. And was your investment on the source of funds</p> <p>12 form zero?</p> <p>13 A I did not contribute cash, but he used any money that</p> <p>14 I would have required for a deposit for the</p> <p>15 restaurant.</p> <p>16 Q Right. Because with Jolan, for example, you required</p> <p>17 them to pay \$200,000 in a rent deposit, right?</p> <p>18 A To be given back, yes.</p> <p>19 Q As a result of your ownership, you were able to lower</p> <p>20 the monthly lease, right?</p> <p>21 A Correct.</p> <p>22 Q So that was what you contributed to the --</p> <p>23 A Correct.</p> <p>24 Q -- J&M Restaurant as well, right?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 207</p>	<p>1 J&M right now.</p> <p>2 Q Well, you're receiving it but he's just paying it to</p> <p>3 --</p> <p>4 A Exactly.</p> <p>5 Q -- Citibank. I'm saying did you require him to pay a</p> <p>6 market value for the lease as opposed to a reduced</p> <p>7 lease as you indicated here in Exhibit 33 since you</p> <p>8 rescinded your interest?</p> <p>9 A I don't think we discussed that. We just kept the</p> <p>10 rent as it was before.</p> <p>11 Q Have you required a rent deposit of, say, something in</p> <p>12 the magnitude of \$200,000 like you did with Jolan --</p> <p>13 A No.</p> <p>14 Q -- since you rescinded your interest?</p> <p>15 A No, I did not.</p> <p>16 Q Do you plan on doing that?</p> <p>17 A No.</p> <p>18 Q Do you plan on taking back a 45 percent share of the</p> <p>19 company after you've resolved this lawsuit with Jolan?</p> <p>20 A Undecided.</p> <p>21 Q Is that an option you and Mr. Bezzaz have discussed?</p> <p>22 A Yes, but there's no time on it. I mean, it could be</p> <p>23 anytime. If I decide to do that, we sit down and talk</p> <p>24 about it.</p> <p>25 Q And in the discussions that you've had, have you</p> <p style="text-align: right;">Page 209</p>

53 (Pages 206 to 209)

Jacob G. Buttnick

February 16, 2011

1 discussed whether there would be anything further you
2 would have to contribute to reassume your 45 percent
3 interest?
4 **A No, it had nothing to do with the lawsuit of J&M. If**
5 **I decide to do that, we'll sit and discuss it.**
6 **Q Okay. You probably are not surprised that I find that**
7 **hard to believe that it's completely untethered to**
8 **this lawsuit, incredulous about that.**
9 **Did you amend the articles of incorporation for**
10 **the company, the J&M Restaurant, LLC, a few short**
11 **weeks after this lawsuit was filed?**
12 **A I believe that was done, but I had nothing to do with**
13 **it so I don't know.**
14 **Q Who did have something to do with it?**
15 **A My former partner, Otmane.**
16 **Q How about your former lawyer, Mr. Russell?**
17 **A Not that I know of.**
18 **(Exhibit No. 34 marked for**
19 **identification.)**
20
21 **Q (By Mr. Cochran) This is Exhibit 34, an amended**
22 **filing with the secretary of state for the J&M**
23 **Restaurant corporation?**
24 **A Okay.**
25 **Q Is it?**

Page 210

1 **A I don't know. I never saw this before I don't think.**
2 **I never saw this before. Whatever attorney he hired**
3 **to do things, he hired. I know nothing about this.**
4 **Q Okay. This is dated September 30, 2010 as far as you**
5 **can tell?**
6 **A As soon as I see the date I'll tell you.**
7 **Q And this removes you from the secretary of state**
8 **filing with the --**
9 **A Yeah, I imagine so.**
10 **Q -- with respect to J&M Restaurant?**
11 **A I didn't know about it until now.**
12 **Q Robie Russell's on here as a registered agent?**
13 **A That's fine.**
14 **Q For the new company?**
15 **A Right.**
16 **Q He was the lawyer you were using originally in this**
17 **lawsuit with Janan, right?**
18 **A Yes, I knew him and used him.**
19 **Q Was he Mr. Bezzaz's attorney at any point prior to**
20 **executing this amended report to the secretary of**
21 **state?**
22 **A Bezzaz may have used him. I forget, but it wouldn't**
23 **bother me at all if he did.**
24 **(Exhibit No. 35 marked for**
25 **identification.)**

Page 211

1 **Q (By Mr. Cochran) Exhibit 35 is an initial annual**
2 **report that was made by the J&M Restaurant to the**
3 **secretary of state?**
4 **A Okay. First time I've seen this.**
5 **Q Otmane Bezzaz submitted it on April 23 of 2010?**
6 **A Yes.**
7 **Q Do you know how close in time that was to the filing**
8 **of the lawsuit by Janan against you?**
9 **A What date again was this? This was 5 -- is it May**
10 **3rd?**
11 **Q This looks like April 23rd --**
12 **A Okay.**
13 **Q -- that it was submitted. Do you know how close in**
14 **time that was to the filing of the suit?**
15 **A When was the lawsuit, in March?**
16 **Q Or April. Did we mark that?**
17 **MR. THOMASON: This is not an**
18 **exhibit, but here's a file stamp.**
19 **MR. COCHRAN: April 23, 2010. Real**
20 **close in time.**
21 **(Exhibit No. 36 marked for**
22 **identification.)**
23
24 **Q (By Mr. Cochran) This is a copy of a complaint for**
25 **damages that Janan and Lance Miyatovich filed against**

Page 212

1 **you. You'll see the date on the back page as being**
2 **April 23, 2010.**
3 **A Okay.**
4 **Q And did you advise Mr. Bezzaz to go down and file an**
5 **amended document with the secretary of state about who**
6 **owned the J&M Restaurant?**
7 **A Didn't advise Otmane anything. That was his business.**
8 **Q Did he go immediately from learning from you that**
9 **there was a lawsuit down to Olympia to file this**
10 **initial annual report we see as Exhibit 35?**
11 **A As I said, I don't know when he went to Olympia. I**
12 **resigned my stock and he took care of it from there.**
13 **Q Did you resign it on -- did you resign it orally to**
14 **him on April 23, 2010 and is that why he took you off**
15 **of the filing with the secretary of state that day?**
16 **A Couldn't come off until I signed papers, got rid of it**
17 **as far as I know.**
18 **Q Did you have an understanding of why he didn't list**
19 **you as a member in the corporation on this April 23,**
20 **2010 submission with the secretary of state?**
21 **A Well, according to the rescission, when did I sign the**
22 **rescission? I don't have that.**
23 **Q Better question posed to you.**
24 **A Okay. I'll have to get my paperwork and find out. I**
25 **had nothing to do with anything that Otmane did.**

Page 213

54 (Pages 210 to 213)

Jacob G. Buttnick

February 16, 2011

1 Q Let me ask you this: Did you authorize Otmene Bezzaz
2 to remove you from the corporate documents that were
3 filed with the secretary of state on April 23, 2010?
4 **A I forget when we had our meetings or anything else.**
5 **(Exhibit No. 37 marked for**
6 **identification.)**
7
8 THE WITNESS: I didn't keep --
9 Q (By Mr. Cochran) Is it possible --
10 **A I don't keep a diary.**
11 Q Is it possible that you authorized him to remove you
12 from the corporate documents that he filed with the
13 secretary of state on April 23, 2010?
14 MR. THOMASON: Calls for
15 speculation.
16 Go ahead.
17 THE WITNESS: As I say, I don't keep
18 a diary. I don't know when we talked about it or
19 anything else. All I know is a rescission agreement
20 is signed. The date is on there.
21 MR. COCHRAN: Let's look at that
22 one.
23 **(Exhibit No. 37 marked for**
24 **identification.)**
25

Page 214

1 Q (By Mr. Cochran) **This is -- is Exhibit 37 a copy of**
2 **that rescission agreement?**
3 **A Yes.**
4 **Q Who drafted this?**
5 **A Otmene's attorney.**
6 Q Who is that?
7 **A I do not know. I imagine his attorney, but I know he**
8 **had it drafted. I don't know if he's capable of doing**
9 **that or not.**
10 Q Did Robie Russell do it?
11 **A No.**
12 Q It's dated May 2nd, 2010, correct?
13 **A Yes.**
14 Q You executed it, right?
15 **A I signed it, yeah.**
16 Q It's not exactly accurate to say that you did not
17 contribute any funds for the formation or operation,
18 because you in fact elected not to take a \$200,000
19 security deposit and you reduced the monthly rent,
20 right?
21 **A Who said it was 200,000?**
22 Q That's what you charged Jolan in 1993.
23 **A No relation to this.**
24 Q Well, was the -- what was the market rate for a
25 security deposit on a commercial enterprise like J&M

Page 215

1 in 2010?
2 **A I have no idea.**
3 Q Really?
4 **A That's correct.**
5 Q You really don't have any idea?
6 **A No.**
7 Q What was the security deposit you were proposing to
8 Mahoney?
9 **A I forget. What was it?**
10 Q We'll pull out the lease here I guess if you wanted
11 to.
12 **The Recital No. 1 on rescission for good and**
13 **valuable consideration. What was the good and**
14 **valuable consideration that you received?**
15 **A I don't know what consideration means. I know he gave**
16 **me the stock, and as far as any security deposit, it**
17 **depends on the person a lot.**
18 **Q No. I mean, this says you gave -- you gave**
19 **consideration to enter into this agreement. What did**
20 **you get? You were giving up your 45 percent interest**
21 **in a going concern, the J&M Restaurant, LLC. What did**
22 **you get in return?**
23 **A I'm not a lawyer. I can't answer that.**
24 Q What -- you're an executor to this document.
25 **A I understand. But it must have been something there.**

Page 216

1 **I just don't understand what that would be and I would**
2 **have to consult with an attorney.**
3 Q Did you have legal counsel to consult with when you
4 signed this?
5 **A No, I did not.**
6 **Q This says for good and valuable consideration, the**
7 **receipt of which is hereby acknowledged. The parties**
8 **mutually agree that on or before September 30, 2012**
9 **you, Mr. Buttneck, may exercise an option to purchase**
10 **an ownership interest in the LLC under the same terms**
11 **and conditions as the original agreement, right?**
12 **A Yes, that's what it says.**
13 Q Essentially, and by the time September 30, 2012 rolls
14 around, you're just going to step right back into a 45
15 percent interest in the business, right?
16 **A I don't know. The attorneys will have to let me know**
17 **about that.**
18 MR. THOMASON: Do you mind if we
19 take a quick break?
20 MR. COCHRAN: No, not at all.
21 (Recess 4:43 to 4:50 p.m.)
22
23 Q (By Mr. Cochran) I wanted to confirm just a few
24 things we touched on earlier. You had offered to buy
25 the J&M business for \$10,000 in the bankruptcy

Page 217

55 (Pages 214 to 217)

Jacob G. Buttneck

February 16, 2011